

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

**SPDES Permit No. NYR20A207**

**Respondent**

Administrative Order for Compliance  
pursuant to Sections 309(a) of the Clean  
Water Act, 33 U.S.C. § 1319

**ADMINISTRATIVE ORDER**

**CWA-02-2015-3034**

The following Administrative Compliance Order ("Order") is issued pursuant to Section 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

**LEGAL AUTHORITY**

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). Under this authority, a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from a point source to a navigable water of the United States. EPA maintains concurrent enforcement authority with authorized States for violations of the CWA.
3. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.

4. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged to water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
9. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems ("MS4s").
11. Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
12. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26, setting forth the NPDES permit requirements for stormwater discharges, including the following:
  - a. 40 C.F.R. § 122.26(b)(8) defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...";

- b. 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
  - c. 40 C.F.R. § 122.26(b)(7)(i) defines medium municipal separate storm sewer system, in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000;
  - d. 40 C.F.R. § 122.26(b)(16)(ii) defines small municipal separate storm sewer system, in part, as not defined as "large" or "medium" municipal separate storm sewer systems; and
  - e. 40 C.F.R. § 122.26(b)(3) defines incorporated place, in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
13. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an "urbanized area" (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
  14. The term "MS4 General Permit" means the NYSDEC SPDES General Permit for Stormwater Discharges from MS4s, as defined by the present general permit number, GP-0-10-002. The current MS4 General Permit, GP-0-10-002, became effective on May 1, 2010, and will expire on April 30, 2015. GP-0-10-002 replaced the former MS4 General Permit, GP-0-08-002, which became effective on May 1, 2008, and expired on April 30, 2010. GP-0-08-002 was preceded by GP-0-02-02, which became effective on January 8, 2003, and expired on January 8, 2008. GP-0-02-02 was administratively extended until the issuance of GP-0-08-002.
  15. Part VII.A.3.g of the MS4 General Permit requires the owner or operator of an MS4 to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4. The program must include: procedures for identifying priority areas of concern (geographic, audiences or otherwise) for Illicit Discharge Detection and Elimination ("IDDE") program; description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (track-down); procedures for eliminating illicit discharges; and procedures for documenting actions.

## FINDINGS

1. The City of New Rochelle ("New Rochelle" or "Respondent") is a municipal corporation chartered under the laws of the State of New York, and as such, is a person, as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an incorporated place as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. At all times relevant to this Order, Respondent owned or operated the Municipal Separate Storm Sewer ("MS4"), located within the corporate boundary of the City of New Rochelle, Westchester County, New York and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.
3. At all relevant times, the MS4 was a point source of a discharge of "pollutants," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. The MS4 discharges stormwater to receiving waters of all areas, except agricultural lands, within the corporate boundaries of the City of New Rochelle, served by the MS4 owned or operated by Respondent. New Rochelle Harbour, within the Long

Island Sound, and other receiving waters are considered waters of the United States within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Respondent applied for, and was issued on May 10, 2003 SPDES Permit NYR20A207 for the MS4 ("the MS4 Permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on March 10, 2003, expired March 9, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2008. At all relevant times, Respondent was authorized to discharge from all portions of the MS4, owned or operated by Respondent, to waters of the United States, only in accordance with Respondent's Storm Water Management Program ("SWMP"), specific terms and conditions of the MS4 Permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.
5. The Respondent's MS4 discharges stormwater into one or more receiving waters that appear on the 303(d) list, or for which a Total Maximum Daily Load ("TMDL") has been established. New Rochelle Harbor has been designated as an impaired water body with floatables and pathogens the primary pollutants of concern. Therefore, Respondent is required to meet additional improvement and minimum control measures pursuant to Part IX C. Pathogen Impaired Watershed MS4 for New York State's General Permit for Stormwater Discharges from MS4s (GP-0-10-002).
6. NYSDEC required Respondent to implement a SWMP by January 8, 2008. Pursuant to GP-02-02, Respondent was required to develop, implement, and enforce a program to detect and eliminate illicit discharges under IDDE (Part IV.3 of the MS4 Permit). Respondent developed an initial SWMP prior to March 10, 2003, but failed to fully implement the SWMP by the January 8, 2008 deadline, and implement a SWMP ensuring that future discharges do not contribute to a violation of applicable water quality standards. GP-02-02 and GP-08-002 expired on January 8, 2008, and April 30, 2010, respectively. Respondent is required to continue permit coverage under GP-0-10-002, which became effective May 1, 2010, and expires April 30, 2015. In accordance with Part IV.D., covered entities authorized under GP-0-08-002 shall continue to fully implement their SWMP, unless otherwise stated.
7. On May 9 and 17, 2007, EPA conducted MS4 compliance inspections of the City of New Rochelle, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Based on these inspections, EPA identified discharges from the MS4 which appeared to contain sanitary sewage. As a result of those observations, it was determined that a follow-up sampling inspection should be performed.
8. On April 28, 2008, and March 18, 2009, EPA conducted wet weather sampling inspections at outfalls within the City of New Rochelle specifically sampling for fecal coliform and total coliform. EPA used the results of that sampling to determine whether storm sewer discharges had contributed to water quality impairments and coliform levels in the storm sewer exceeded water quality standards or ambient levels. Sampling verified that outfalls at the locations identified had exceeded the NY Water Quality Standard of either 10,000 MPN /100ml for total coliform, and/or 2,000 MPN /100ml for fecal coliform.

9. EPA's sampling results are described below:

<u>Location</u>	<u>Coliform (MPN/100ml)</u>	
	<u>Fecal</u>	<u>Total</u>
New Rochelle Public Yard (outfall)	900,000 MPN/100ml	1,600,000 MPN/100ml
- Glen Island/Woodland Avenue (outfall)	11,000 MPN/100ml	50,000 MPN/100ml
- Church Street (outfall)	5,000 MPN/100ml	130,000 MPN/100ml
- New Rochelle Public Marina (sample from dock)	30,000 MPN/100ml	30,000 MPN/100ml
- Boston Post Road (Stephenson Blvd north of creek)	3,000 MPN/100ml	24,000 MPN/100ml
Portman Road & Fifth Avenue (NW catch basin)	17,000 MPN/100ml	80,000 MPN/100ml
Valley Place & Fifth Avenue (South catch basin)	23,000 MPN/100ml	80,000 MPN/100ml
Pryor Manor Road (off Dogwood Lane) outfall*	N/A	N/A

\*added to POS

10. Based upon the field observations conducted by EPA on May 9 and 17, 2007, sampling inspections conducted on April 28, 2008, and March 18, 2009, EPA determined that Respondent was in noncompliance with the MS4 Permit by failing to fully implement a comprehensive illicit detection and elimination program required by NYSDEC by January 8, 2008, as part of their SWMP. Based on the findings of these inspections, EPA issued Administrative Order, CWA-02-2009-3002 on February 13, 2009 ("the 2009 AO"), pursuant to Sections 309 and 308 of the Act, ordering Respondent to locate and eliminate sources of illicit discharges to the storm drain collection system in the City of New Rochelle by November 2010. The work required as part of the 2009 AO included cleaning storm and sanitary drains, sampling, testing, and remediation. The 2009 AO further required the repair of leaking sanitary sewers based on the illicit discharge detection elimination investigation, televising storm drains, and sampling to prioritize the storm drain sub-systems. Additionally, the 2009 AO required the submission of semi-annual progress reports and a final report detailing all activities taken to come into compliance.
11. On April 27, 2010, Respondent requested an extension of time from November 2010 until March 2013, to complete the work required by the 2009 AO. On August 31, 2010, EPA issued Administrative Order, CWA-02-2010-3051 ("the 2010 AO"), extending the November 2010 compliance schedule to March 31, 2013, in accordance with Respondent's request.
12. On January 14, 2013, EPA issued Administrative Order CWA-02-2013-3022 ("the 2013 AO"), again extending the deadlines for the completion of tasks under the EPA 2010 AO.
13. On December 9, 2014, EPA issued an Order to Show Cause finding that Respondent failed to meet any of the deadlines required by the 2013 AO. On January 14, 2015, in response to the Order to Show Cause, Respondent met with EPA officials and demonstrated progress toward achieving compliance with the Act. As a result of that meeting, EPA agreed to revise the deadlines contained in the 2013 AO. EPA has reviewed the proposed deadlines submitted by Respondent in its letter dated January 23, 2015, and has determined that the proposed revised schedule is reasonable.
14. Respondent's failure to comply fully with the requirements of the MS4 Permit are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1301(a) and 1342.



## ORDERED PROVISIONS

1. Based on the Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Respondent is hereby ORDERED to take the actions described below.
2. Immediately upon receipt of the original copies of this Order, a responsible official of New Rochelle shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.
3. Respondent shall take all corrective actions necessary to eliminate illicit connections identified by the sampling and track down program and implement all requirements of the MS4 permit, including the following:
  - a. Respondent shall continue to implement and shall comply with all requirements of the 2013 AO, with the exception that all dates in the Plan of Action will be superseded by this Order;
  - b. Respondent shall prepare, implement and enforce a Stormwater Management Program pursuant to the requirements of Part IV of the NYSDEC SPDES General Permit for Stormwater Discharges from MS4 (GP-0-10-002). The Stormwater Management Program shall specifically address the identification of illicit connections to minimize discharges and sources of pathogens in the New Rochelle storm system; and
  - c. Respondent shall implement a Plan of Action according to the following revised schedule:

<u>Item</u>	<u>To be completed no later than</u>
Complete all track-down (re-sampling) of the system outfalls in question;	May 31, 2015
Complete all video televising work necessary pursuant to the Plan of action to eliminate illicit sanitary connections to the City of New Rochelle storm water system;	August 31, 2015
Complete all remediation work to eliminate the illicit discharges; and	March 31, 2016
Submit a final report to EPA and NYSDEC summarizing all activities taken to come into compliance.	May 31, 2016

## GENERAL PROVISIONS

1. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR § 122.22), and shall include the following certification:

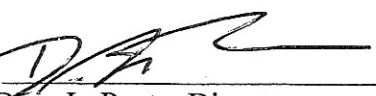
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2. The Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, New York 10007-1866  
212-637-4244

3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R., Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 2/20/15

Signed:   
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

**SPDES Permit No. NYR20A207**

**Respondent**

Administrative Order for Compliance pursuant  
to Sections 309(a) of the Clean Water Act, 33  
U.S.C. §1319

**ADMINISTRATIVE ORDER**

**CWA-02-2015-3034**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, Charles Strome, an official of City of New Rochelle with the title of,  
City Manager, do hereby acknowledge the receipt of copy of the  
ADMINISTRATIVE ORDER, City of New Rochelle CWA-02-2015-3034.

DATE:

3/5/15

SIGNED:

C.B. Strome